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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,009	09/19/2000	Daniel R. Ansley	BTI 0200	5080

7590 11/20/2001  
Serle Ian Mosoff  
Law Offices at Sound Shore  
303 Boston Post Road  
Port Chester, NY 10573

EXAMINER

JAMROZ, MARGARET E

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 11/20/2001

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/666,009

Applicant(s)

ANSLEY ET AL.

Examiner

Margaret E Jamroz

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-8 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *restriction election facsimile*.

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DETAILED ACTION

1. The location of your application in the PTO has changed. To aid in correlating papers for this application, all further correspondence regarding this application should be directed to Megan Jamroz in Art Unit 1644, Technology Center 1600.

***Restriction Requirement***

2. Please Note: In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-308-4315. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.
3. Restriction to one of the following inventions is required under 35 U.S.C. § 121:
- I. Claims 1-4, drawn to the use of a composition of matter to stimulate the disease fighting systems of a reptile; classified in Class 424, subclass 278.1.
  - II. Claims 1-5, drawn to the use of a composition of matter to stimulate the disease fighting systems of a fish; classified in Class 424, subclass 278.1.
  - III. Claims 1-4, drawn to the use of a composition of matter to stimulate the disease fighting systems of a amphibian; classified in Class 424, subclass 278.1
  - IV. Claims 1-4 and 6-8, drawn to the use of a composition of matter to stimulate the disease fighting systems of a bird; classified in Class 424, subclass 278.1.
4. Groups I-IV are different methods. The inventions as grouped in Groups I-IV are distinct, each from the other, because they represent different inventive endeavors as one does not suggest the other; therefore, each method is patentably distinct.
5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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### ***Species Election***

6. Irrespective of whichever group applicant may elect, applicant is further required under 35 USC 121 (1) to elect a single disclosed species to which the claims would be restricted if no generic claim is finally held to be allowable and (2) to list all claims readable thereon including those subsequently added.

If Group I is elected, applicant is required to elect a specific use of a specific composition of matter of a specific molecular weight to stimulate the disease fighting systems of a specific reptile.

These species are distinct because the specific use of a specific composition of matter of a specific molecular weight to stimulate the disease fighting systems of a specific reptile differ with respect to the specific composition of matter, the reptile used in the method, the method of administration, and the endpoint of the method; thus each specific method employing a specific use of a specific composition of matter represents patentably distinct subject matter.

If Group II is elected, applicant is required to elect a specific use of a specific composition of matter of a specific molecular weight to stimulate the disease fighting systems of a specific fish.

These species are distinct because the specific use of a specific composition of matter of a specific molecular weight to stimulate the disease fighting systems of a specific fish differ with respect to the specific composition of matter, the fish used in the method, the method of administration, and the endpoint of the method; thus each specific method employing a specific use of a specific composition of matter represents patentably distinct subject matter.

If Group III is elected, applicant is required to elect a specific use of a specific composition of matter of a specific molecular weight to stimulate the disease fighting systems of a specific amphibian.

These species are distinct because the specific use of a specific composition of matter of a specific molecular weight to stimulate the disease fighting systems of a specific amphibian differ with respect to the specific composition of matter, the amphibian used in the method, the method of administration, and the endpoint of the method; thus each specific method employing a specific use of a specific composition of matter represents patentably distinct subject matter.

If Group IV is elected, applicant is required to elect a specific use of a specific composition of matter of a specific molecular weight to stimulate the disease fighting systems of a specific bird against a challenge by a specific bacteria.

These species are distinct because the specific use of a specific composition of matter of a specific molecular weight to stimulate the disease fighting systems of a specific bird differ with respect to the specific composition of matter, the bird used in the method, the method of administration, the bacteria used to challenge, and the endpoint of the method; thus each specific method employing a specific use of a specific composition of matter represents patentably distinct subject matter.

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7. Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.


8. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Megan Jamroz whose telephone number is (703) 308-8365. The examiner can normally be reached Monday through Friday from 8:00 AM to 4:30 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Margaret (Megan) Jamroz, Ph.D.  
Patent Examiner  
Technology Center 1600  
November 8, 2001

  
CHRISTINA Y. CHAN  
SUPERVISORY PATENT EXAMINER  
GROUP 1800 1640